IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12032 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

USMANKHAN YASIMKHAN PATHAN & 4 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

==========

Appearance :

MR RR VAKIL for Petitioner(s) : 1 - 5.
MR LB DABHI Ld. AGP for Respondent(s) : 1 - 3.
RULE SERVED for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 15/09/2005

ORAL JUDGMENT

1. Heard learned Advocate Mr.R.R.Vakil for the petitioners and learned AGP Mr.L.B.Dabhi for the respondents.

2. By this petition, the petitioners challenge order

passed in December,2002 by the Director, Pension & Provident Fund Office, Gandhinagar bearing No.DPP/LMSCA Nos.10122-94 to 10126-94/1994, pursuant to an order passed in SCA No.10122 of 1994 and allied matters by this Court on 1st August,2001.

3. The ground of challenge is that the order, though purports to have been passed to comply with the direction of this Court issued in SCA Nos.10122 to 10126 of 1994, in fact, it does not comply with the order and, therefore, may be quashed and set aside.

3.1 It is also urged that in light of Annexures-'C', 'D', 'E' and 'F', the pensionary benefits may be awarded to the petitioners.

4. Brief facts of the case are that the petitioners were former employees of the erstwhile princely State of Devgadh Baria. Upon independence of country and merger of the said State into India, they claimed pensionary benefits. Question that arose was whether the petitioners were in employment of the State of Devgadh Baria or whether they were “Khangi” (personal) employees of the Ruler of the said State. Differently put, whether the remunerations paid to them was flowing out of coffers of the then princely State of Devgadh Baria or it was

flowing out of the purse of the Ruler. If they were being paid out of the State revenue of the State of Devgadh Baria, they would be entitled to pensionary benefits.

5. The petitioners had approached this Court with SCA Nos.10122 to 10226 of 1994 which came to be disposed of by a common judgment dated 1st August,2001 and this Court made following observations in Para.14 and 15, while disposing of the said petitions :

> “Para.14
>
> In view of the fact, admittedly five persons who were “Khangi” servants of the former Ruler of Devgadh Baria State have been sanctioned by the Government itself after reconsidering the documents produced before it. Therefore, it is not possible for this Court to record any finding that the petitioners are entitled to the pensionary benefits on the basis of the record. If they were being paid out of the State revenue they are entitled to the pensionary benefits and that finding has to be recorded by the concerned department of the Government.

Para.15

In the facts and circumstances of the case, I think it just and proper to direct the Secretary, Finance Department – respondent no.1 herein to reconsider the entire material of the parties and decide as to entitlement of the petitioners' pensionary benefits after giving reasonable opportunity of hearing to the parties concerned. The parties concerned, would be at liberty to produce all the relevant documents including the relevant resolution, service books, joint pay bill of several “Khangi” and other servants of former Ruler of Devgadh Baria State and letters written by the former Ruler of Devgadh Baria State to the Collector of Panchmahals Districts, Godhara and any other material which any of the parties like to produce before the authority concerned. The authority concerned may require necessary information from the Collector, Panchamahals District, Godhara, in this respect, after inquiring into the matter and considering the entire material on record, shall decide the same in accordance with law by a speaking order, as expeditiously as possible preferably within a period of four months from the date of

presentation of certified copy of this order.”

6. It is, thus, clear that the respondent authorities were directed by this Court to take a fresh decision on claim of the petitioners of pensionary benefits after giving reasonable opportunity to them of hearing. The parties were granted liberty to produce all relevant documents including relevant resolutions, service books etc. This was ordered to be done because a finding was held necessary to be given by the respondent authorities on question whether the remuneration was being paid out of State fund or from purse of the Ruler. Following that, impugned order has been passed.

7. Upon going through the impugned order (Annexure-G), it is clear that although the authority was conscious of the fact as to what is required to be done by it, the authority has not given a specific finding on question whether, the payments made to the petitioners was being made out of the coffers of the then State of Devgadh Baria or whether, it was being paid out of purse of the Ruler. The authority has also not assigned reasons for non-consideration of the case of the petitioners. The authority in Para.8 indicated that because of whatever was stated in Para.4 and 5 of the affidavit-in-reply by the State Government in earlier set of SCAs, the

petitioners were not entitled to pensionary benefits. Specific inquiry as to whether payment was made out of coffers of the State of Devagdh Baria has not been carried out and, therefore, the order does not meet with the expectation of the order passed in earlier set of SCAs on 1st August,2001.

8. The said order is, therefore, quashed and set aside. This Court reiterates the said directions given in earlier set of SCAs and directs that the authority shall examine the question of entitlement or disentitlement of the petitioners to pensionary benefits by examining the question whether, the remunerations were being paid to the petitioners out of the State fund or out of the pocket of the Ruler of the princely State of Devgadh Baria. The authority will also take into consideration Annexures-'B' to 'F' and Annexure-H Collectively while taking a decision and pass a speaking and reasoned order.

9. It appears that barring Mr.U.Y.Pathan i.e. petitioner No.1, rest of the petitioners have expired and the petition is preferred through their heirs and legal representatives. The question of entitlement of their pension, therefore, would be limited upto the date of their respective demise. The decision would be rendered at the earliest but, not later than end of 2005. The

decision, when taken, shall be communicated to the petitioners within a week therefrom by a Regd. Post A.D.. Rule is made absolute. No costs.

(A.L.DAVE,J.)

(vipul)